Judgment Reserved

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Revision No. 143 of 2001
(Old No. 620 of 1988)

Punjab National Bank
(Acquisition & Transfer of Undertakings)
Act of 1970, having its Head Office at
7 Bhika Ji Cama Place, New Delhi
And one of its Branch Office at Kashipur
District Nainital, U.P.
Through its manager ….Plaintiff/Revisionist

Versus

1. M/s Aryan Stell Works
   Industrial Estate, Kashipur
   District- Nainital
   Through its sole Proprietor
   Smt. Tarawati
   W/o Late Shri Brij mukand
2. Shri Chandra Prakash
   S/o late Har Bans Singh, Mohall Ganj
   Kashipur, District- Nainital.
3. Shri Shiv Kumar Sharma
   S/o Shri Bhukanlal Sharma
   R/o Mohalla Kila, Kashipur
   District- Nainital……. Defendants/opp. Parties.

Shri M.C. Pande, learned counsel for the revisionist.
Shri Jagdhis Prasad, learned counsel for the respondents.

Hon'ble Prafull C. Pant, J.

This revision, preferred under Section 115 of Code of Civil Procedure, 1908, is directed against the finding and order dated 20.06.1988 passed by learned Civil Judge, Nainital in Civil Suit No. 116 of 1985, whereby it directed the plaintiff to choose option as to which of the two contracts dated 28.04.1979 and 20.08.1980, the plaintiff wants to pursue. By the impugned order, learned trial court has held that the suit is bad for misjoinder of causes of action.

2. Brief facts of the case, are that plaintiff- Punjab National Bank, sanctioned a loan to defendant- M/s Aryan Steel Works on 28.04.1979, for cash credit limit of Rs. 75,000/- A suit in respect of recovery of said loan, amounting to Rs. 1,35,269.58, was instituted before the trial court on 19.12.1985. The guarantors of the loan were also included as defendants. Defendant No. 1, filed the written statement and raised the objection hat suit I s bad for misjoineder of causes of action. ON which, issue No. 7 was framed along with other issues. The said issue was decided by the trial court as a preliminary issue, holding that the suit is bad for misjoinder of causes of action and directing the plaintiff to choose one of the contracts dated 28.04.1979 or 20.08.1980.

3. It is pertinent to mention that initially loan was sanctioned on 28.04.1979 by the defendant No. 1 through its proprietor- Shri Brij Mukand Arya. Thereafter, on the death of Shri Brij Mukand Arya, his widow- Smt. Tarawati, succeeded the M/s Aryan Steel Works and sought continuance of cash credit facility. It appears that renewal of old cash credit facility was sanctioned by the bank on 20.08.1980. Learned counsel for the respondents, argued that these were two different agreements, as such a Single suit could not have been maintained on the two different causes of action. In the opinion of this Court, the submission made on behalf of the respondents is wholly misconceived. And trial court has erred in law in holding that suit is bad for misjoinder of causes of action. Perusal of the loan papers, copies of which are filed with the affidavit by the revisionist, show that on 20 the August, 19801, no new loan was sanctioned rather “renewal of old C/C facility of Rs. 75,000/-” was

sought which was sanctioned. There was no occasion to split up the trial by the trial court, as the entire claim I n the suit related to one account number i.e. against one borrower- M/s Aryan Steel Works. The copy of the guarantee deed dated 20th August, 1980, do not indicate otherwise. In the circumstances of the case, this Court is in agreement with the submission of learned counsel for the revisionist that the finding on issue No. 7 and the impugned order, suffer from illegality.

4. Shri Jagdish Prasad, learned counsel for the respondents, submitted that this revision is not maintainable against the order, passed by the trial court. In this connection, attention of this Court was drawn to the amended proviso to sub-section (1) of Section 115 of the Code of Civil Procedure, 1908, which reads as under:-

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding on issue, in the course of a suit or other proceeding, except where the order, if it has been made in favor of the party applying for revision, would have finally disposed of the suit or other proceedings."

It is pertinent that above substituted proviso came into force w.e.f. 1st July, 2002 by Act No. 46 of 1999. Before that date, the Section stood as amended by Act No. 104 of 1976, w.e.f. 01.02.1977:-

"Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where-

> *(a) the order, if it had been in favour of the party applying for revision, would have finally disposed of the suit or other proceeding, or*

(b) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made."

The relevant date for maintaining this revision is 16.07.1988, when the revision was filed before the Allahabad High Court, from where it has been received by transfer for its disposal, under Section 35 of U.P. Reorganization Act, 2000. On said date, this revision was maintainable under clause (b) of proviso to section 115, as quoted above. Therefore, this court is unable to agree with the contention of the learned counsel for the defendants.

5. For the reasons as discussed above, the revision is allowed. Impugned finding and order dated 28.06.1988, passed in civil suit No. 116 of 1985, is set aside. As the suit is an old one, the trial corrupt is directed to proceed further in the suit without further delay.

(**Prafull C. Pant, J.)**

Dt: 4th March, 2006
Sweta